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Letter dated 12 March 2004 from the President of the Governing Council of the United Nations Compensation Commission addressed to the President of the Security Council

The Governing Council of the United Nations Compensation Commission has concluded its fifty-first session, which was held at Geneva from 9 to 11 March 2004. During the opening plenary meeting of the fifty-first session the Council elected Ambassador Costa of Romania, by acclamation, as a new Vice-President of the Council.

During the opening plenary meeting of the fifty-first session representatives of Kuwait and Saudi Arabia addressed the Council. Their respective statements are being sent by mail with the original of this letter.

During the session the Council considered two reports and recommendations made by the Panels of Commissioners in the D category of claims, together with the second instalment of Palestinian category C late claims. The reports on category D claims concern the review of individual claims for damages above US$ 100,000 and the Palestinian report concerns the review of individual claims for damages up to $100,000. The attached tables provide details of the amounts of compensation claimed in the reports and the amounts awarded by the Governing Council. The total amount awarded in all of the reports approved at this session is $203,804,511.74.

The Governing Council considered the report of the Executive Secretary: summary of activities, covering the period from 1 November 2003 to 31 January 2004, together with the oral addendum to the report of the Executive Secretary made at the opening plenary meeting. The report covers the processing of claims, the withdrawal of claims and the payment of approved claims.

The Council discussed the arrangements for ensuring that payments are made into the Compensation Fund in the light of information provided by the secretariat. The Council took note of the information, requested the secretariat to provide further information on this issue as it becomes available and will keep the matter on its agenda.

The Council discussed several issues relating to the processing and payment of claims, including the twenty-fifth report of the Executive Secretary pursuant to article 41 of the Provisional Rules for Claims Procedure, and approved corrections to certain category A, C and D claims.

The Council considered the issue of duplication of awards and recommended that the matter be kept on its agenda.

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The Council continued its consideration of the requests by the Governments of India, the Islamic Republic of Iran, Pakistan, the Philippines, Sri Lanka and the Syrian Arab Republic for the submission of claims of individuals to the Commission after the expiration of the established deadlines for the submission for the filing of such claims.

At the fiftieth session the Governing Council requested each of the Governments to limit their proposed late claims that they considered to satisfy the previously established criteria for the acceptance of late claims (the "Canadian criteria"), namely the inability to file claims within the original filing period, owing to the existence of a war situation or civil disorder, and evidence of a prior attempt to file the claims within the relevant filing deadlines, and to submit such claims to the Commission by 31 January 2004. Governments were notified of the Governing Council's request by a letter dated 24 December 2003.

A subgroup of the Working Group considered samples of claims, in the light of the previously established criteria, submitted by the Governments of the Islamic Republic of Iran, Pakistan, the Philippines, Sri Lanka and the Syrian Arab Republic, discussed this issue and heard presentations from the Governments at meetings held on 13, 17, 19, 24 and 26 February and 4 March 2004. The Council noted that the total number of late claims that each Government submitted to the Commission by 31 January 2004 is as follows: the Government of the Islamic Republic of Iran — 7,125 claims; the Government of Pakistan — 2,067 claims; the Government of the Philippines — 309 claims; the Government of Sri Lanka — 402 claims; and the Government of the Syrian Arab Republic — 264 claims.

Following extensive discussion the Council decided to accept the following claims for filing, on the basis of the previously established Canadian criteria and the circumstances pertaining to particular regions in each respective country and to refer them to the category D Panels of Commissioners for review:

(a) From the Government of Iran: 2,385 claims from claimants residing in the provinces of Kurdistan, Kermanshah and Khuzestan, comprising category A claims;

(b) From the Government of Pakistan: 859 claims from claimants residing in Pakistani administered Jammu and Kashmir, and in the Jhelum district of Punjab province, comprising category A and C claims;

(c) From the Government of the Philippines: 309 claims from claimants residing in the Central Luzon and Mindanao regions, comprising category A and C claims;

(d) From the Government of Sri Lanka: 402 claims from claimants residing in the Northern and Eastern provinces, comprising category A claims.

The Council requested that the Panels of Commissioners should be required to verify that each claimant was resident during the original filing period in the particular province or region of their respective country as referred to above.

The Council noted that, rather than presenting claim files that it felt met the established criteria, the Government of India responded to the secretariat's letter of 24 December 2003 by reiterating its request that such criteria should not be applied to the claims and that the claims be accepted for filing.

The Council concluded that claims included in the request made by the Government of the Syrian Arab Republic, with the possible exception of one claim concerning an individual who had been taken prisoner, do not meet the previously established criteria and therefore cannot be accepted for filing. The Council asked that the Government of the Syrian Arab Republic be requested to provide further information concerning that one claim and that the claim be referred to the category D Panel of Commissioners for determinations on both admissibility and the merits of the claim.

Finally, the Council decided that it would not consider or accept any further requests for the submission of late claims, and adopted decision 219 (S/AC.26/Dec.219 (2004)) in this respect. The Council also requested the secretariat to accordingly inform claimant Governments that enquire about this issue in the future of its decision.

The Council further considered the request made by the delegation of Kuwait at the opening plenary meeting of the forty-seventh session concerning the late filing of a number of individual claims from the bedoun living in Kuwait. Pursuant to the request made by the Governing Council at the forty-eighth session, the secretariat sent a list of questions in order to solicit further information from the Government of Kuwait on this issue, to which the Government responded. The Government of Kuwait also provided a further White Paper on this matter and made an oral presentation at the meeting of the subgroup on late claims held on 4 March 2004.

The Council requested that, without prejudging the question of the admissibility of such claims, the secretariat, in consultation with the relevant authorities in Kuwait, establish the nature and availability of information concerning the proposed bedoun claimants, and obtain a definitive list of such claims as well as information as to the types of losses and amounts of compensation to be requested, together with samples of the evidence that such claimants would be able to provide. The Council also requested the secretariat to present a report to the Working Group on options for ensuring that the processing of such claims would be completed as soon as possible, as well as relevant financial implications, for the Working Group's consideration at an informal meeting to be held prior to the next session.

The Council further considered requests made by the Government of Kuwait with respect to the claims that it will file with the Commission pursuant to Governing Council decision 12, relating to the 605 former detainees in Iraq determined to be dead. With respect to the determination of an amount of compensation for the claims of family members of deceased detainees relating to mental pain and anguish, the Council adopted decision 218 (S/AC.26/Dec.218 (2004)), which sets out, on a per family basis, an amount of compensation of $1,100 per month during the 13-year period of uncertainty about the fate of the detainees, with a ceiling of $200,000 for the cumulative awards made under this decision and decision 8, which awards compensation for the mental pain and anguish from the death of a family member.

The Council considered the request for the filing of 23 claims under categories C and D that were not previously filed within the deadlines established by the Governing Council because of a sincerely held belief by the claimant that, because of their family relationship to a detainee, harmful consequences might result for the detainee if the claim was filed. The Council noted that a large number of family

members of deceased detainees were able to file their claims within the relevant filing period and therefore recommended that these claims not be accepted for filing.

The Council also considered the request made by the Government of Kuwait at the opening plenary meeting of the session concerning the late filing of a Kuwaiti Government claim relating to the costs of locating, identifying and recovering the remains of deceased detainees, and did not accept the claim for filing.

The Council considered and took note of the report of the Executive Secretary on the distribution of payments and transparency, and the return of undistributed funds, and requested the secretariat to continue to inform the Council of the reports of Governments and international organizations on the distribution of payments and the return of undistributed funds.

The Council considered the payment of environmental claims and noted the presentation made by the Government of Saudi Arabia at the opening plenary meeting of the session on this issue; the Council recommended that this matter be kept on the agenda of the Governing Council for further consideration.

The Council received the fifth report of the F4 Panel of Commissioners, pursuant to Governing Council decision 132, concerning the tracking of awards made for environmental monitoring and assessment projects. Paragraph 5 of the report contains a recommendation from the Panel of Commissioners that claimant Governments be requested to certify in their final reports to the Panel that the awarded funds have been managed and distributed in accordance with the system previously described by them to the Executive Secretary, and have been audited in accordance with the Governments' generally accepted auditing standards. The Council adopted this recommendation.

The Council also considered the monitoring of the use of compensation awards in the light of a request made by the Governments of Kuwait and Saudi Arabia relating to the Panel's recommended remediation methods on the basis of which the Governing Council approved such awards. The Council referred the issue of the monitoring of the use of compensation awards, and the issue raised by the Governments of Kuwait and Saudi Arabia, to a future meeting of the Working Group for its further consideration, and decided to keep these matters on the agenda for the next session. The Council also referred the issue of the amendment of environmental claims by claimants to a future informal meeting of the Working Group and requested the secretariat to prepare an information note on this issue.

With respect to the audit review of the activities of the Compensation Commission, the Council heard a presentation by the secretariat concerning the latest developments in the discussions between the Executive Secretary and the Office of Internal Oversight Services, namely the stated intention of the Office of Internal Oversight Services to cease its auditing of the Compensation Commission on 1 April 2004. The Council encouraged the Executive Secretary to continue his discussions with the Office and ensure that there is no break in the audit coverage of the Commission.

The Council further considered two recommendations made by the Board of Auditors, the first being joint inspection missions by the Office of Internal Oversight Services and the Compensation Commission. The Council concluded that this issue may again be reviewed should the need arise. The Council considered the second recommendation, regarding the processing fees deducted by Governments, in the

light of an information note prepared by the secretariat. While taking note of the information provided, the Council did not reach consensus on accepting this recommendation, and requested the secretariat to provide annually updated information as to the amounts of processing fees deducted by Governments for the Working Group's further consideration in the future.

Finally, the Governing Council decided to hold its fifty-second session from 29 June to 1 July 2004.

To date, the Commission has awarded compensation of approximately $48.2 billion, including the awards approved at the fifty-first session, and approximately $18.2 billion of the amounts awarded have been made available to Governments and international organizations for distribution to successful claimants in all categories of claims. The payments to successful claims approved by the Council at the fifty-first session will be made in the next round of payments, in accordance with Governing Council decision 197, scheduled for 6 April 2004. At the end of February 2004 the balance of the Compensation Fund was approximately $171 million.

(*Signed*) Michael **Steiner**
President of the Governing Council

Annex I

Summary of recommendations

A. Report and recommendations made by the D2 Panel of Commissioners concerning part two of the sixteenth instalment of individual claims for damages above $100,000 (category D claims) (S/AC.26/2004/1)

Country or international organization	*Number of claims recommended for payment*	*Number of claims not recommended for payment*	*Amount of compensation claimed (US$)*	*Amount of compensation recommended (US$)*
Austria	-	2	923 489.38	nil
Bangladesh	1	-	842.93	842.93
Canada	1	1	409 631.54	202 605.00
Egypt	2	-	2 950 238.76	1 681 603.17
France	1	1	582 446.47	45 755.09
Germany	-	2	814 631.71	nil
India	10	3	6 133 992.92	2 214 682.05
Israel	-	1	97 895.25	nil
Italy	3	-	1 048 105.04	255 117.41
Jordan	45	8	174 366 848.85	16 113 327.93
Kuwait	126	2	155 343 091.82	79 374 196.32
Lebanon	3	1	1 234 644.13	233 286.95
Pakistan	2	-	825 363.32	373 477.34
Russian Federation	1	-	223 003.46	21 540.42
Saudi Arabia	5	13	15 714 358.85	1 107 987.92
Spain	-	1	205 444.27	nil
Syrian Arab Republic	9	3	7 432 527.22	2 050 069.11
Turkey	1	-	498 985.00	93 758.80
United Arab Emirates	-	1	89 519 368.02	nil
United Kingdom	3	5	16 872 311.20	44 029.50
United States	10	2	7 180 710.45	1 152 757.29
Yemen	7	1	3 001 726.30	761 324.38
UNDP Washington	3	1	1 003 257.15	137 461.22
UNRWA Gaza	1	-	236 946.51	78 798.19
Total	**234**	**48**	**486 619 860.55**	**105 942 621.02**

B. Report and recommendations made by the D2 Panel of Commissioners concerning part two of the seventeenth instalment of individual claims for damages above $100,000 (category D claims) (S/AC.26/2004/2)

Country	*Number of claims recommended for payment*	*Number of claims not recommended for payment*	*Amount of compensation claimed (US$)*	*Amount of compensation recommended (US$)*
India	16	4	4 576 524.57	759 938.21
Israel	1	-	1 115 000.00	134 150.57
Jordan	58	5	63 100 926.92	13 541 983.51
Kuwait	132	11	118 438 098.45	69 363 985.19
Lebanon	1	-	433 529.41	29 131.01
Pakistan	22	-	10 139 069.48	3 096 506.48
Saudi Arabia	24	24	51 946 849.91	3 034 921.54
Thailand	1	-	107 231.83	5 901.73
Turkey	-	1	3 933 000.00	nil
Yemen	3	1	3 674 604.32	72 790.15
Total	**258**	**46**	**257 464 834.89**	**90 039 308.39**

C. Report and recommendations made by the Panel of Commissioners concerning the first instalment of Palestinian late claims for damages up to $100,000 (category C claims) (S/AC.26/2003/26)

Submitting entity	*Number of claims recommended for payment*	*Number of claims not recommended for payment*	*Number of duplicate claims*	*Amount of compensation claimed (US$)*	*Amount of compensation recommended (US$)*
Palestinian Authority	390	8	8	19 495 152.43	7 822 582.33

Annex II

Documents before the Compensation Commission at its fifty-first session

1. Report and recommendations made by the D2 Panel of Commissioners concerning part two of the sixteenth instalment of individual claims for damages above $100,000 (category D claims) (S/AC.26/2004/1).
2. Decision concerning part two of the sixteenth instalment of individual claims for damages above $100,000 (category D claims) (S/AC.26/Dec.214 (2004)).
3. Report and recommendations made by the D1 Panel of Commissioners concerning part two of the seventeenth instalment of individual claims for damages above $100,000 (category D claims) (S/AC.26/2004/2).
4. Decision concerning part two of the seventeenth instalment of individual claims for damages above $100,000 (category D claims) (S/AC.26/Dec.215 (2004)).
5. Report and recommendations made by the Panel of Commissioners concerning the second instalment of Palestinian late claims for damages up to $100,000 (category C claims) (S/AC.26/2004/3).
6. Decision concerning the second instalment of Palestinian late claims for damages up to $100,000 (category C claims) (S/AC.26/Dec.216 (2003)).
7. Twenty-fifth report of the Executive Secretary pursuant to article 41 of the Provisional Rules for Claims Procedure (S/AC.26/2004/4).
8. Decision concerning corrections of awards pursuant to article 41 of the Provisional Rules for Claims Procedure (S/AC.26/Dec.217 (2004)).
9. Decision concerning the determination of an amount of compensation for the claims of family members of deceased detainees relating to mental pain and anguish (S/AC.26/Dec.218 (2004)).
10. Decision concerning requests for the late filing of claims (S/AC.26/Dec.219 (2004)).